

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DAVID BARNHART,

PETITIONER

v.

No. 1:12CV6-A-A

STATE OF MISSISSIPPI, ET AL.

RESPONDENTS

MEMORANDUM OPINION

This matter comes before the court on the *pro se* petition of David Barnhart for a writ of *habeas corpus* under 28 U.S.C. § 2254. The State seeks dismissal of the petition for failure to state a claim. Barnhart has responded, and the matter is ripe for resolution. For the reasons set forth below, the State's motion will be granted and Barnhart's petition dismissed for failure to state a claim.

Facts and Procedural Posture

David Barnhart is incarcerated in the Warm Springs Correctional Center in Carson City, Nevada. (confirmed through the Nevada Department of Corrections online inmate locator search at www.doc.nv.gov). He has been indicted for one (1) count of armed robbery in Lowndes County, Mississippi. Barnhart is currently facing extradition for this charge. (Circuit Court Cause No. 10-0453-CRI).

On January 9, 2012, Barnhart filed the instant federal *habeas corpus* petition in which he raises no grounds – but requests that the court dismiss all Mississippi criminal proceedings against him. ECF, doc. 1. Barnhart has not yet been convicted and sentenced; as such, he is not Mississippi state inmate. Barnhart is, instead, a pre-trial detainee; therefore, the court will review the petition under 28 U.S.C. § 2241, the proper vehicle for analysis of *habeas corpus*

claims in which the petitioner is not being held pursuant to a state court judgment.

Discussion

A pre-trial detainee has a right to seek federal *habeas corpus* relief. *Braden v. 30 Judicial Circuit Court of Kentucky*, 410 U.S. 484, 93 S.Ct. 1123 (1973). However, “federal *habeas corpus* does not lie, absent ‘special circumstances,’ to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court.” *Id.* at 489. In addition, a petitioner is not permitted to derail “a pending *state* proceeding by an attempt to litigate constitutional defenses prematurely in *federal* court.” *Id.* at 493 (emphasis added). Further, there is a “distinction between a petitioner who seeks to ‘abort a state proceeding or to disrupt the orderly functioning of state judicial processes’ by litigating a speedy trial defense to a prosecution prior to trial, and one who seeks only to enforce the state’s obligation to bring him promptly to trial.” *Brown v. Estelle*, 530 F.2d at 1280, 1283 (5th Cir. 1976). Those who pursue pretrial *habeas corpus* petitions seek:

[either] to dismiss an indictment or otherwise prevent a prosecution[, or] to force the state to go to trial While the former objective is normally not attainable through federal *habeas corpus*, the latter is, although the requirement of exhaustion of state remedies still must be met.

Id. (emphasis added). “In other words, a federal court may generally consider a *habeas* petition for pretrial relief from a state court only when the accused does not seek a dismissal of the state court charges pending against him.” *Greer v. St. Tammany Parish Jail*, 693 F. Supp. 502, 508 (E.D. La. 1988). If, as in the instant case, petitioner is attempting to prevent the prosecution of his case, then he is seeking to “abort a state proceeding or to disrupt the orderly functioning of state judicial processes.” *Brown*, 530 F.2d at 1282-83; *Braden*, 410 U.S. at 489.

In the present case, Barnhart, who is incarcerated in another state, seeks to have his Mississippi criminal charges dismissed based upon his right to a speedy trial – an affirmative

defense to the criminal charges. As discussed this claim for relief cannot be achieved through federal *habeas corpus*. As such, the instant petition for a writ of *habeas corpus* will be dismissed for failure to state a constitutional claim. A final judgment consistent with this memorandum opinion will issue today.

SO ORDERED, this the 10th day of October, 2012.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE